

## SECTION 15. REAL ESTATE AUCTION DEFINITIONS AND REQUIREMENTS.

### 15.1 Definitions.

(a) Absentee bid means a procedure that allows a bidder to participate in the bidding without being physically present.

~~(d)(b) Absolute Auction means an auction where the real estate is sold to the highest qualified bidder with no minimum bid or limiting conditions. The seller may not bid personally or through an agent, unless the seller is a party to the dissolution of any marriage, limited liability company, partnership, or corporation, and is bidding as an individual apart from the selling entity. Also known as an auction without reserve.~~

~~(a)(c) Auction means a method of selling real estate in a public forum through open and competitive bidding.~~

(d) Auction agreement means the same as a written listing agreement or written agency agreement for the purposes of this section.

(e) Auction With Reserve means an auction of real estate in which the seller or his agent reserves the right to establish a disclosed or undisclosed minimum bid, to accept or reject any and all bids, and to withdraw the real estate at any time prior to announcement of the completion of the sale by the auctioneer. Also known as reserve auction or as an auction subject to confirmation.

~~(b)(f) Auctioneer means any individual who holds an active Arkansas Real Estate license pursuant to ACA § 17-42-101 et seq. [and an active Arkansas Auctioneer license pursuant to ACA § 17-17-101 et seq.], who offers, attempts, or agrees to auction real estate or participate in a real estate auction.~~

(g) Bid means a prospective buyer's indication of offer of a price the prospective buyer is willing to pay to purchase real estate at auction.

~~(e)(h) Buyer's premium means an advertised percentage of the high bid or flat fee added to the high bid to determine the total contract price to be paid by the buyer.~~

(i) Internet auction means an auction in which a prospective buyer bids using electronic media. The term also includes an auction in which the auctioneer conducts the auction using electronic media.

(j) Rafter Bid or Puffing of a Bid means a fictitious bid used to increase the final sales price.

(k) Reserve means the minimum price that a seller is willing to accept for a property to be sold at auction.

(l) Shill means a person who falsely pretends to have no association with the auctioneer or seller and gives the impression of being an enthusiastic bidder by puffing of a bid.

~~(d) Absolute Auction means an auction where the real estate is sold to the highest qualified bidder with no minimum bid or limiting conditions. The seller may not bid personally or through an agent, unless the seller is a party to the dissolution of any marriage, limited liability company, partnership, or corporation, and is bidding as an individual apart from the selling entity. Also known as an auction without reserve.~~

~~(e) Auction With Reserve means an auction of real estate in which the seller or his agent reserves the right to establish a disclosed or undisclosed minimum bid, to accept or reject any and all bids, and to withdraw the real estate at any time prior to the completion of the sale by the auctioneer. Also known as reserve auction.~~

### 15.2 Nature of auction and written auction agreement.

(a) Auction shall be with reserve, unless the real estate is offered without reserve using explicit terms such as "absolute" or "without reserve." In an auction "with reserve," the auctioneer may withdraw the real estate at any time until he/she announces completion of the auction. In an "absolute" auction or auction "without reserve," after the auctioneer calls for bids on real estate, that real estate cannot be withdrawn unless no bid is made within a reasonable time.

(b) The auctioneer shall have a written auction agreement with the owner stating the parties' agreement regarding the terms and conditions of the auction, including whether the auction will be an absolute auction or auction with reserve and the terms of reserve or conditions on the sale; whether a buyer's

premium will be charged the buyer and who will receive the buyer's premium collected, and whether the auctioneer or others on the auctioneer's behalf may bid on or purchase the subject real estate at the auction. The auction agreement shall include the address of the property; the compensation to be received by the auctioneer; and the signatures of all parties. At the time of securing the auction agreement, the auctioneer who obtains it shall give the person or persons signing the agreement a true copy of the agreement. In those cases where the auction is an absolute auction or auction without reserve, the auction agreement or an addendum thereto must include the following statement in 14 point bold-faced type.

"SELLER ACKNOWLEDGES AND AGREES THAT THE PROPERTY OF SELLER (OR PORTION THEREOF IF CONSPICUOUSLY NOTED ON THIS AGREEMENT BETWEEN AUCTIONEER AND SELLER) IS TO BE SOLD AND CONVEYED TO THE HIGHEST BIDDER AT THE AUCTION SALE REGARDLESS OF PRICE AND WITHOUT SELLER HAVING ANY AUTHORITY OR LEGAL RIGHT TO REFUSE TO CONVEY THE PROPERTY (OR PORTION THEREOF) TO SUCH HIGH BIDDER. SELLER IS STRONGLY ADVISED TO VISIT WITH AN ARKANSAS LICENSED ATTORNEY WITH REGARD TO THE DIFFERENCE IN AN AUCTION WITHOUT RESERVE (SUCH AS THAT INTENDED BY AND TO OCCUR PURSUANT TO THIS AGREEMENT) AND AN AUCTION WITH RESERVE. SELLER IS ALSO STRONGLY ENCOURAGED TO VISIT WITH ANY LIENHOLDER OR SELLER PURSUANT TO ANY INSTALLMENT LAND SALE (OR SIMILAR) CONTRACT WITH REGARD TO THE NATURE OF THIS AUCTION AGREEMENT."

(c) A bidder may retract a bid prior to the auctioneer's announcement of completion of the auction, but a bidder's retraction does not revive any previous bid.

(d) Each sale at auction is complete and considered legally binding upon the person making the final winning bid at the moment the auctioneer announces the completion of the sale by the fall of the hammer or in any other customary manner.

### **15.3 Auctioneer/Seller bidding or purchasing auctioned real estate.**

#### **(a) Auctioneer bidding.**

(1) The auctioneer shall not bid or otherwise purchase the real estate being auctioned, or permit others to do so on his behalf, unless he has disclosed that he may bid or may purchase the real estate as provided herein.

(2) In a reserve auction, the auctioneer may bid on behalf of the seller after giving notice pursuant to section c below.

#### **(b) Seller bidding.**

(1) In an absolute auction, the auctioneer shall not knowingly permit the seller or others on the seller's behalf to bid on the seller's real estate being auctioned, unless the seller is a party to the dissolution of any marriage, limited liability company, partnership, or corporation, and is bidding as an individual apart from the selling entity and disclosure as required herein has been made to those in attendance at the auction.

(2) In a reserve auction, the auctioneer shall not knowingly permit the seller or others on the seller's behalf to bid on the seller's real estate being auctioned unless the auctioneer has disclosed that the seller or others on the seller's behalf may bid on the real estate being auctioned as provided herein.

#### **(c) Notices.**

Immediately prior to opening the bidding on the subject real estate, the auctioneer shall announce to all of those in attendance at the auction, the terms and conditions of the auction, and announce if the seller and/or auctioneer, or others on their behalf may bid on or purchase the real estate being auctioned.

#### **15.4 Auction Advertisements.**

An auctioneer who advertises real estate shall comply with the following requirements:

- (1) Auction advertisements that include real estate must disclose the name of the real estate firm and auctioneer licensed with that firm who will be conducting the auction;
- (2) Advertising real estate for sale at which some parcels will be auctioned with reserve and some parcels will be auctioned without reserve shall clearly and conspicuously indicate this fact to the public.
- (3) An auctioneer shall disclose the existence of any buyer's premium to be charged to a buyer at an auction sale. Such disclosure shall be made in all published advertising and disclosed prior to the start of an auction.

#### **15.5 Internet auction sale procedure and absentee bids.**

In an Internet auction sale or in an auction that allows for absentee bids, the auctioneer must validate a buyer's capability to participate in the sale by obtaining the buyer's name, address, e-mail address, phone number, and ability to legally enter into a contract. In addition, the auctioneer shall obtain an agreement to the terms of the auction procedure from any buyer wishing to participate in the sale.

#### **15.6 Auctioneer to maintain records.**

- (a) The Principal Broker of the real estate firm with which the auctioneer is licensed must maintain for a period of three years copies of all agreements, listing contracts, handbills, advertisements, and other pertinent records, including signed closing statements and any auction recordings whether audio, video, or audiovisual if the auction was recorded. The records are subject to review by the commission.
- (b) For all auctions that an auctioneer advertises as absolute, a copy of the closing statement signed by the seller and buyer for the real property that was the subject of the absolute auction must be maintained by the principal broker for a period of three years. In the event deed does not transfer for real estate advertised for inclusion in an absolute auction, the transaction file must include a detailed explanation as to why the property was not sold.

#### **15.7 Certain acts prohibited.**

Prohibited acts include the following:

- (1) Knowingly receiving or using a rafter bid, puffing of a bid, or any type of bid rigging such as utilizing the services of a shill;
- (2) Knowingly permitting an unlicensed individual to participate in a real estate auction;

- (3) Knowingly and intentionally misleading the seller, buyer, or bidders in the advertising, conduct, and closing of an auction.
- (4) A continued and flagrant course of misrepresentation or making false promises, either by the auctioneer, an employee of the auctioneer, or by someone acting on behalf of and with the auctioneer's consent.
- (5) Failure to properly make any disclosures or to provide documents or information required by this section.
- (6) Establishing a pattern of practice of advertising auctions that include real estate as "absolute" when the auctioneer knew or should have known that a minimum bid or limiting conditions existed for the properties to be sold.
- (7) Establishing a pattern of practice of advertising auctions that include real estate as "absolute" then subsequently cancelling the auctions or converting the auctions to an Auction with Reserve type auction.
- (8) Any other conduct, whether of the same or a different character from that specified in this section, whereby the real estate licensee falsely bids or knowingly receives false bids on the property to be sold only for the purpose of raising the price for the seller or auctioneer.

#### **15.8 Unlicensed real estate activity.**

Any unlicensed person who participates in a real estate auction; or who makes or offers to make a rafter bid; or who engages in or offers to engage in puffing of a bid; or who acts or offers to act as a shill is prima facie evidence that the person is performing activities listed in Arkansas Code Annotated Section 17-42-103(9) and is thereby engaged in unlicensed real estate activity and as such is subject to the civil penalties set out in Arkansas Code Annotated Section 17-42-109.